Java Industries Sdn Bhd v Siva Muniandy a/l Muniandy & Anor

HIGH COURT (KOTA KINABALU) — NO K25–55 OF 2010
DAVID WONG J
9 MARCH 2011

Administrative Law — Remedies — Judicial review — Refusal by Chairman of Industrial Court to grant adjournment — Whether refusal had occasioned miscarriage of justice — Whether adjournment should be allowed because it was applicant's first and only request — Industrial Relations Act 1967 s 30(3)

Civil Procedure — Adjournment — Refusal — Chairman of Industrial Court refused to grant adjournment — Discretion to grant adjournment — Whether substantial delay, wasted costs and concerns of case management now assume importance on application for leave to amend and adjournment — Whether refusal had occasioned miscarriage of justice

Java Industries Sdn Bhd ('the applicant') had terminated the employment of Siva Muniandy a/l Muniandy ('the first respondent') after serving upon the latter a one month notice of termination. When the first respondent questioned his dismissal the dispute was referred to the Industrial Court ('the second respondent'). At the mediation sessions, which the applicant had not attended, the applicant through its solicitors had informed the first respondent that it would not be making him any offer of settlement as it was of the strong opinion that the termination was a valid termination simpliciter pursuant to a one month notice under the employment contract. On the day of the trial on 12 October 2010, the applicant sought an adjournment on the grounds that its witnesses were unavailable on the dates fixed for trial but the Chairman of the Industrial Court refused an adjournment. After considering the merits of the application the Industrial Court disallowed the adjournment on the grounds that an adjournment would run counter to the spirit of the Industrial Relations Act 1967, which required an expeditious determination of the matter. Thereafter at the close of the hearing proper of the dispute on 13 October 2010, the applicant sought a fresh trial of the dispute on the grounds that it had new evidence. The Industrial Court proceeded to hand down its award without making any reference to the new evidence. This was the applicant's application for a judicial review of the Industrial Court's decision refusing its application for an adjournment on the date of the trial. The applicant submitted that there had been a miscarriage of justice when the chairman of the Industrial Court, inter alia, did not comply with the rules of natural justice and unreasonably

proceeded to hear the case. The applicant also submitted that the chairman had committed an error of law and acted in excess of his jurisdiction when he failed to consider the new evidence adduced by the applicant solely on the basis that the hearing had concluded. The applicant further submitted that the request for an adjournment at the date of the trial was the first and only time such a request had been made and thus it ought to have been allowed.

Held, dismissing the application for judicial review with costs:

(1) In the present case, the chairman's main ground for refusing the adjournment was that he had inferred from the applicant's conduct that it 'may be playing for time to the detriment of the claimant' and that such conduct would be against 'the spirit of the Act, that is an expeditious determination of the matter'. The spirit of s 30(3) of the Act was to reach a 'just resolution' with emphasis on speed and efficiency. From the facts of this case it was clear that the applicant had been given some five months to prepare its case and for it to say now that it had new evidence was not reasonable by any means. This contention was corroborated by the applicant's conduct at the two mediation sessions where it emphatically stated that there was nothing to mediate. Further in this day and age the applicant had to be ready for trial once the trial dates were fixed by the courts and it was no excuse for the applicant to inform the court that it had business meetings and was therefore unable to attend mediation sessions and trial. Substantial delay, wasted costs and the concerns of case management now assume importance on an application for leave to amend and adjournment (see paras 4 & 13).

(2) The applicant's contention that the request for an adjournment at the date of the trial was the first and only time such a request had been made had no relevance in today's climate in case management in the courts, be it in the Industrial Courts or the civil courts. In any event the applicant had been given adequate time to prepare its case and the question of getting a first chance did not arise (see para 13).

[Bahasa Malaysia summary

Java Industries Sdn Bhd ('pemohon') telah menamatkan pekerjaan Siva Muniandy a/l Muniandy ('responden pertama') selepas menyerahkan kepada responden pertama satu bulan notis penamatan. Apabila responden pertama mempersoalkan pembuangannya pertikaian dirujuk kepada Mahkamah Perusahaan ('responden kedua'). Semasa sesi pengantaraan, di mana pemohon tidak hadir, pemohon melalui peguambelanya telah memberitahu responden pertama bahawa ia tidak akan membuatnya apa-apa tawaran penyelesaian kerana ia berpendapat kukuh bahawa pembuangan kerja tersebut adalah *termination simpliciter* yang sah berikutan satu bulan notis di bawah kontrak pekerjaan. Pada hari perbicaraan pada 12 Oktober 2010, pemohon memohon penangguhan atas alasan bahawa saksi-saksinya tidak boleh menghadiri pada

A tarikh-tarikh yang ditetapkan untuk perbicaraan tetapi Pengerusi Mahkamah Perusahaan menolak penangguhan tersebut atas alasan bahawa penangguhan akan bertentangan kepada maksud tersirat Akta Perhubungan Perusahaan 1967, yang memerlukan penentuan segera perkara tersebut. Kemudiannya pada akhir pendengaran pertikaian tersebut pada 13 Oktober 2010, pemohon B memohon perbicaraan baru pertikaian tersebut atas alasan bahawa ia mempunyai keterangan baru. Mahkamah Perusahaan meneruskan memberikan awardnya tanpa membuat apa-apa rujukan kepada keterangan baru. Ini adalah permohonan pemohon untuk semakan kehakiman keputusan Mahkamah Perusahaan menolak permohonannya untuk penangguhan pada C tarikh perbicaraan. Pemohon berhujah bahawa terdapat ketidakadilan apabila pengerusi Mahkamah Perusahaan, antara lain, tidak mematuhi peraturan keadilan semulajadi dan secara tidak munasabah meneruskan untuk mendengar kes. Pemohon juga berhujah bahawa pengerusi telah melakukan kesilapan undang-undang dan bertindak melebihi bidang kuasanya apabila D beliau gagal untuk mempertimbangkan keterangan baru yang dikemukakan oleh pemohon satu-satunya atas asas bahawa pendengaran telah tamat. Pemohon selanjutnya berhujah bahawa permohonan untuk penangguhan pada tarikh perbicaraan adalah yang pertama kali dan satu-satunya permohonan sedemikian dibuat dan oleh itu ia sepatutnya dibenarkan.

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Diputuskan, menolak permohonan untuk semakan kehakiman dengan kos:

(1) Dalam kes ini, alasan utama pengerusi untuk menolak pengguhan tersebut adalah bahawa beliau telah membuat kesimpulan daripada tingkah laku pemohon bahawa ia 'may be playing for time to the F detriment of the claimant' dan bahawa tingkah laku sedemikian akan bertentangan 'the spirit of the Act, that is an expeditious determination of the matter'. Maksud tersirat s 30(3) Akta adalah untuk mencapai a 'just resolution' dengan penekanan atas speed and efficiency. Daripada fakta kes ini ia adalah jelas bahawa pemohon telah diberi lima bulan untuk G menyediakan kesnya dan untuk ia sekaranya menyatakan bahawa ia mempunyai keterangan baru adalah tidak munasabah sebenarnya. Hujahan ini menyokong tingkah laku pemohon semasa kedua-dua sesi pengantaraan di mana ia secara tegas menyatakan bahawa tidak terdapat apa-apa untuk ditimbangkan. Selanjutnya pada masa sekarang pemohon H mesti bersedia untuk perbicaraan apabila saja tarikh-tarikh perbicaraan ditetapkan oleh mahkamah dan ia tidak boleh menjadi alasan untuk pemohon untuk memberitahu mahkamah bahawa ia mempunyai mesyuarat perniagaan dan oleh itu tidak dapat hadir sesi pengantaraan dan perbicaraan. Kelewatan substansial, kos yang dibazirkan dan I kebimbangan pengurusan kes sekarang ini mengambilkira pentingnya permohonan untuk izin meminda dan penangguhan (lihat perenggan 3 & 14).

(2) Hujahan pemohon bahawa permohonan untuk penangguhan pada tarikh perbicaraan adalah yang pertama kali dan satu-satunya permohonan sedemikian dibuat tidak membuat apa-apa hubungan dalam keadaan hari ini dalam pengurusan kes di mahkamah, sama ada di Mahkamah Perusahaan atau pun mahkamah-mahkamah sivil. Walau bagaimanapun pemohon telah diberi masa yang wajar untuk menyediakan kesnya dan persoalan untuk mendapat peluang pertama tidak berbangkit (lihat perenggan 13).]

Notes

For cases on judicial review under judicial remedies, see 1(1) Mallal's Digest (4th Ed, 2010 Reissue) paras 781–787.

For cases on refusal under judicial remedies, see 2(1) Mallal's Digest (4th Ed, 2010 Reissue) paras 241–249.

Cases referred to

Aon Risk Services Australia Ltd v Australian National University [2009] HCA 27, HC (folld)

Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223, HL (refd)

Lee Ah Tee v Ong Tiow Pheng & Ors [1984] 1 MLJ 107, FC (refd)

Smart Glove Corp Sdn Bhd v Industrial Court, Malaysia & Anor [2006] 6 MLJ 664, HC (refd)

Legislation referred to

Industrial Relations Act s 30, 30(3)

Thomas Ting (Ng & Ting) for the appellants.
Rizwandean Bukhari M Borhan (Rahim Abdullah & Co) for the respondent.

David Wong J:

PROCEEDINGS

[1] This is an application for judicial review of the decision of the Industrial Court dated 14 October 2010 on the ground that the applicant was not given a fair hearing on the 12 October 2010 where the industrial chairman refused an application for adjournment by the applicant and proceeded to hear the evidence of the claimant/first respondent ('the first respondent').

BACKGROUND

[2] The chronology of events is set out in the submission of counsel for the

first respondent and as it is accurate I, for convenience, reproduce it here and it is as follows:

(a) The case was first mentioned before the registrar of the Industrial Court on 25 May 2010 in which the registrar gave directions to parties on filing of the statement of case, statement in reply, rejoinder and bundle of documents. The registrar then fixed the matter for mediation on 30 July 2010;

(b) the first respondent filed his statement of case on 14 June 2010;

(c) the applicant filed its statement in reply on 1 July 2010;

(d) the first respondent filed the rejoinder and bundle of documents on 23 July 2010;

(e) in the applicant's statement in reply, the applicant offered only one ground of defence for thefirst respondent's dismissal: that the termination was done in accordance with cl 9 of the letter of appointment which stated that termination of service only required a 30 day notice; no other grounds were given;

(f) on 30 July 2010, the first respondent and his solicitors attended the mediation before the Registrar of the Industrial Court. The applicant's solicitor was in attendance but the applicant did not send any of its officers to the mediation;

(g) during the mediation, the applicant's solicitors informed the Industrial Court that they would not be making any offer for settlement and that their defence is solely based on one ground; that they are entitled to terminate the service with a one month notice in accordance with the provisions of the contract of employment ie termination simpliciter.

(h) the registrar then directed parties to do research as to whether termination simpliciter is valid under the law and the case was then adjourned to 16 August 2010 for further mediation;

(i) by letter dated 12 August 2010, the applicant's solicitors wrote to the Industrial Court asking for an adjournment of the mediation fixed on 16 August 2010 as the applicant is unable to have a representative present in court on 16 August 2010 due to business commitments. The applicant also informed the court that they would like to amend the statement in reply but require more time to locate the documents;

(j) the applicant's solicitors also wrote a letter dated 19 August 2010 to the first respondent's solicitors in which is stated 'We have our client's instructions to seek further adjournment until 18 October 2010 to enable our client to conduct further investigations into your client's

claim. Please be informed that if the opportunity arises, we would most definitely advice our client to settle this matter and avoid incurring additional costs;

(k) the applicant's application to adjourn the mediation was granted and a new mediation date was fixed on 30 August 2010;

(l) on 30 August 2010, the first respondent's solicitors informed the Industrial Court that termination simpliciter is not valid under the law. The first respondent was also in attendance. The applicant was only represented by its solicitors and once again did not send any of its officers to attend the mediation. The applicant's solicitors then informed the court that they would not be making any offer of settlement;

(m) during the said mediation, the first respondent instructed his solicitors to ask for trial dates to be fixed as it was clear that the applicant was not interested in reaching any form of settlement in the matter. At the mediation itself, the registrar fixed trial dates on 12 October 2010 to 13 October 2010;

(n) on 5 October 2010, the applicant's solicitors wrote a letter to the Industrial Court seeking an adjournment of the trial on the grounds that their witnesses are unavailable;

(o) on the day of trial on 12 October 2010, the applicant's solicitors applied for an adjournment of the trial on the grounds that their witnesses are unavailable and that the applicant intend to amend their statement in reply;

(p) the applicant's solicitors also informed the court that the applicant's director could not attend court as he had a business meeting to attend to;

(q) the learned chairman refused the application for adjournment and proceeded with the trial;

(r) the trial concluded on 12 October 2010 and oral submissions were heard from both parties. The court then fixed 14 October 2010 for ruling;

(s) on 13 October 2010, the applicant's solicitors wrote a letter to the Industrial Court stating that fresh evidence has since emerged and that it 'is necessary and crucial that they be included to the present case and that afresh trial shall be conducted with all the relevant facts and evidence available.' The said letter then listed out the 'new evidence' which the applicant would apply to be introduced;

(t) on the same day on 13 October 2010, the applicant's solicitors wrote another letter to the Industrial Court seeking permission to amend the statement in reply and enclosed therein the proposed amended statement in reply.

(u) on 14 October 2010, the Industrial handed down its Award;

(v) on 15 October 2010, the Industrial Court wrote to the applicant's solicitors and stated as follows: 'In your said letter you had applied that 'fresh evidence' be included to the present case and that 'afresh trial be conducted'. You had who in your letter applied to amend the company's defence to include 'fresh evidence'.

> As you are aware, the trial in this case had concluded on 12 October 2010 and that by 4.45pm the Court had risen for the day. As you may also be aware, the Court has on 14 October 2010 delivered its full award after the trial vide Award No 1322 of 2010, which award has been extended to your goodself.

ISSUE

[3] It is obvious that there is only one issue before me and it is this:

Whether the Industrial Court chairman was correct in refusing the adjournment requested by the applicant on the date of trial on 12 October 2010?

[4] It is appropriate that I should set out the reasons why the chairman refused the adjournment and they are these:

> The decision whether to grant an adjournment or not is a judicial discretion and like all judicial discretion it ought to be exercised judicially. Merits of the application should be considered. In my view, in the circumstances as laid out above, an adjournment should not be allowed. I suspect that the company may be playing for time to the detriment of the claimant. To allow an adjournment would run counter to the spirit of the Act, that is an expeditious determination of the matter before it as provided in ss 29(g) and 30 which also provides that the court shall make its award without delay. Hence, the court decided to proceed with the trial.

[5] The 'circumstances' referred to by the chairman are as set out above by me. In short the chairman had taken into consideration the relevant circumstances before he came to his decision to disallow the application for adjournment. The chairman's decision is now being attacked by the applicant on grounds as listed in counsel's submission and they are as follows:

Equity, good conscience and the substantial merits of the case

(a) the second respondent committed an error of law and acted in excess of its jurisdiction when it failed to hearken to the trite principle that industrial disputes adjudication in Malaysia must be determined according to equity, good conscience and the substantial merits of the case without regards to technicality and legal form. Instead, the 2nd Respondent had decided the case on a narrow

and technical approach inspired by strict legal form with an overemphasis on an expeditious disposal of the trial by sacrificing natural justice and ignoring the merits of the case;

(b) the decision of the second respondent of 14 October 2010 was made in error of law and jurisdiction in as much as the second respondent ignored and/or failed to appreciate the spirit of s 30(5) of the Industrial Relations Act ('the Act') in an unreasonable manner and without good reason exercising its discretion to deny the applicant's repeated application for an adjournment;

Imputations made in vacuum leading to an abortive trial

(c) in disallowing the Applicant's application for an adjournment, the 2nd Respondent committed an error of law and an error of jurisdiction by accusing the Company of 'playing for time to the detriment of the Claimant' when there was no basis whatsoever for the imputation of tactical maneuvering on the part of the Applicant. The second respondent's said decision was therefore perverse and further null and void in law causing the trial in the matter to become abortive and devoid of the character of a proper and fair trial;

Denial of natural justice, Wednesbury unreasonableness & the 2nd Respondent's failure to direct itself to established judicial precedents

(d) the 2nd Respondent committed an error of law and acted in excess of its jurisdiction when it failed to consider and/or rejected the Applicant's application dated 13.10.2010 to amend the Applicant's Statement in Reply solely on the basis that the trial and/or hearing of the matter had concluded. The decision of the 2nd Respondent was unreasonable in the Wednesbury sense;

(e) the 2nd Respondent committed an error of law and acted in excess of its jurisdiction when it failed to consider and/or rejected the Applicant's application dated 13.10.2010 to amend the Applicant's Statement in Reply without properly hearing the merits of the said application and granting the Applicant the opportunity to be heard on the said application in accordance to the rules of natural justice. The decision of the 2nd Respondent was unreasonable in the Wednesbury sense;

(f) the 2nd Respondent committed an error of law and acted in excess of its jurisdiction when it failed to consider and/or rejected the Applicant's application dated 13.10.2010 to introduce fresh evidence solely on the basis that the trial and/or hearing of the matter had concluded. The decision of the 2nd Respondent was unreasonable in the Wednesbury sense;

(g) the second respondent committed an error of law and acted in excess of its jurisdiction when it failed to consider and/or rejected the applicant's application dated 13.10.2010 to introduce fresh evidence without properly hearing the merits of the said application and granting the Applicant the opportunity to be heard on the said application in accordance to the rules of natural justice. The decision of the second respondent was unreasonable in the Wednesbury sense; and

(h) the second respondent committed an error of law and acted in excess of its jurisdiction when it failed to appreciate that the Applicant was entitled to make an application for an amendment to the Statement in Reply and/or Defence at

any stage of the proceedings, even after trial. In the result, the 2nd Respondent had failed to direct itself on the relevant established legal principles.

[6] In short, the applicant is saying that there has been a miscarriage of justice when the chairman did not comply with the 'Wednesbury principle'. Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223, at p 229, expounded the principle in this way:

> It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington U in *Short v Poole Corp* [1926] Ch 66 at pp 90–91, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

[7] To bolster his submission, counsel relies on the fact that the application for adjournment was the first and only time that the applicant had made and refers to the case of *Smart Glove Corp Sdn Bhd v Industrial Court, Malaysia & Anor* [2006] 6 MLJ 664 where the learned judge had this to say when he agreed with the decision of the Industrial Court chairman to disallow an application for adjournment:

> The applicant, after failing to produce its witnesses and after being given the *second chance* to do so, has itself to be blamed when the Industrial Court refused to grant further adjournment... As pointed by the learned chairman, *the case has been pending for more than two and a half years.* (Emphasis added by counsel)

[8] Relying on what the learned judge said, counsel submits that the applicant in this case was never given a 'first chance' let alone a 'second chance'.

[9] In opposing this judicial review, counsel for thefirst respondent refers the court to the case of *Lee Ah Tee v Ong Tiow Pheng & Ors* [1984] 1 MLJ 107 where the Federal Court held that:

The discretion of the Judge to allow or refuse an application for adjournment was a subject dealt with in depth by the Court of Appeal in *Dick v Filler*. We agree and adopt the following principles as regards the discretion in allowing or refusing an adjournment:

(1) Whether or not a party should be granted an adjournment is wholly at the discretion of the judge. He would exercise the discretion solely upon his view of the facts.

(2) Prima facie this discretion is unfettered.

(3) The question to ask in any particular case is whether on the facts there are adequate or sufficient reasons to refuse the adjournment.

(4) Although an appellate court has power to interfere with the judge's decision in regard to the granting of an adjournment, it would refrain from doing so unless it appears that such discretion has been exercised in a way which tended to show that all necessary matters were not taken into consideration or the decision was otherwise arbitrarily made.

(5) An appellate court ought to be very slow to interfere with the exercise of the discretion. But if it appears that the result of the order made below would be to defeat the rights of the parties altogether or that there would be an injusticeto one or the other of the parties then the appellate court has power and indeed a duty to review the exercise of the discretion.

FINDINGS OF THE COURT

[10] It appears that the transformation taking place in the country's judiciary has also caught on in the Industrial courts and rightly so as the public now expects such expeditious manner of disposal of disputes in courts. The transformation which I am referring to is that courts will now only grant adjournments in exceptional circumstances which have been few and far in between. The overriding purpose in the court transformation is to ensure proceedings in court can be a 'just, quick and cheap resolution of the real issues'. The Australia jurisdiction has gone through this transformation and this is what their Apex Court (High Court) said in the case of *Aon Risk Services Australia Ltd v Australian National University* [2009] HCA 27 where the court was concerned with the issue of whether leave to amend the pleadings should be granted and I quote:

Of course, a just resolution of proceedings remains the paramount purpose of r 21; but what is a 'just resolution' is to be understood in light of the purposes and objectives stated. Speed and efficiency, in the sense of minimum delay and expense, are seen as essential to a just resolution of proceedings. This should not detract from a proper opportunity being given to the parties to plead their case, but it suggests that limits may be placed upon re-pleading, when delay and cost are taken into account. The Rule's reference to the need to minimise costs implies that an order for costs may not always provide sufficient compensation and therefore achieve a just

resolution. It cannot therefore be said that a just resolution requires that a party be permitted to raise any arguable case at any point in the proceedings, on payment of costs.

In the past it has more readily been assumed that an order for the costs occasioned by the amendment would overcome injustice to the amending party's opponent. In *Cropper v Smith* (1884) 26 Ch D 700 at 711. Bowen LJ described an order for costs as a panacea that heals all. Such a view may largely explain the decision of this court in *Shannon v Lee Chun* (1912) 15 CLR 257, which upheld a decision allowing the plaintiff to raise a new case at the second trial, but which imposed a condition as to costs. The modern view is that even an order for indemnity costs may not always undo the prejudice a party suffers by late amendment (*The Commonwealth v Verwayen* (1990) 170 CLR 394 at 464–465 per Toohey J). In the present case it difficult to see that such an order could be sufficient compensation, given that Aon would be required to again defend litigation which was, effectively, to be commenced afresh.

The views expressed by *Lord Griffiths in Ketteman v Hansel Properties Ltd* [1987] AC 189 at 220, that justice cannot always be measured in money and that a judge is entitled to weigh in the balance the strain the litigation imposes upon litigants, are also now generally accepted *Berowra Holdings Pty Ltd v Gordon* (2006) 225 CLR 364. *In Bomanite Pty Ltd v Slatex Corp Aust* (1991) 32 FCR 379 at 392 French J said of Bowen U's statements in *Cropper v Smith*:

... That may well have been so at one time, but it is no longer true today... Non-compensable inconvenience and stress on individuals are significant elements of modern litigation. Costs recoverable even on an indemnity basis will not compensate for time lost and duplication incurred where litigation is delayed or corrective orders necessary.

In Ketteman Lord Griffiths recognised, as did the plurality in *JL Holdings*, that personal litigants are likely to feel the strain more than business corporations or commercial person (*Ketteman v Hansel Properties Ltd* [1987] AC 189 at 220;

Queensland v JL Holdings Pty Ltd (1997) 189 CLR 146 at 155). So much may be accepted. But it should not be thought that corporations are not subject to pressures imposed by litigation. A corporation in the position of a defendant may be required to carry a contingent liability in its books of account for some years, with consequent effects upon its ability to plan financially, depending upon the magnitude of the claim. Its resources may be diverted to deal with the litigation. And, whilst corporations have no feelings, their employees and officers who may be crucial witnesses, have to bear the strain of impending litigation and the disappointment when it is not brought to an end. The stated object in the Court Procedures Rules, of minimising delay, may be taken to recognise the ill-effects of delay upon the parties to proceedings and that such effects will extend to other litigants who are also seeking a resolution in their proceedings.

An application for leave to amend a pleading should not be approached on the basis that a party is entitled to raise an arguable claim, subject to payment of costs by way of compensation. There is no such entitlement. All matters relevant to the exercise of the power to permit amendment should be weighed. The fact of substantial delay and

wasted costs, the concerns of case management, will assume importance on an application for leave to amend. Statements in *JL Holdings* which suggest only a limited application for case management do not rest upon a principle which has been carefully worked out in a significant succession of cases (See *John v Federal Commissioner of Taxation* (1989) 166 CLR 417; [1989] HCA 5; *Imbree v McNeilly* (2008) 82 AUR 1374 at 1385–1386 [45] per Gummow, Hayne and Kiefel JJ; 248 ALR 647 at 659; [2008] HCA 40). On the contrary, the statements are not consonant with this Court's earlier recognition of the effects of delay, not only upon the parties to the proceedings in question, but upon the court and other litigants. Such statements should not be applied in the future.

A party has the right to bring proceedings. Parties have choices as to what claims are to be made and how they are to be framed. But limits will be placed upon their ability to effect changes to their pleadings, particularly if litigation is advanced. That is why, in seeking the just resolution of the dispute, reference is made to parties having a sufficient opportunity to identify the issues they seek to agitate.

In the past it has been left largely to the parties to prepare for trial and to seek the court's assistance as required. Those times are long gone. The allocation of power, between litigants and the courts arises from tradition and from principle and policy. It is recognised by the courts that the resolution of disputes serves the public as a whole, not merely the parties to the proceedings.

[11] From that passage the following principles can be distilled:

(a) the pace of litigation is no more in the hands of the litigants but with the court;

(b) the principle that a party is entitled to amend his pleading to raise an arguable claim subject to payment of costs by way of compensation is not tenable anymore and is considered outdated;

(c) substantial delay, wasted costs, and the concerns of case management now assume importance on an application for leave to amend and adjournment; and

(d) litigants through their counsel are required to comply with court's directions given during case management.

[12] I will now apply the above principles on the factual matrix herein. Firstly to recap, the chairman's main ground for refusing the adjournment is that he had inferred from the applicant's conduct that they 'may be playing for time to the detriment of the claimant' and this would be against 'the spirit of the Act, that is an expeditious determination of the matter'. The pertinent section of the Industrial Relations Act is s 30(3) which reads as follows:

30 Awards.

(3) The Court shall make its award without delay and where practicable within thirty days from the date of reference to it of the trade dispute or of a reference to it under section 20 (3).

[13] The spirit of this section in my view is similar to what I have set out earlier in respect of court needing to reach a 'just resolution' with emphasis on speed and efficiency. Section 30 in fact prescribes that all awards should be delivered within 30 days from the date of reference by the Minister. It is undisputed in this case that this reference was first mentioned in 25 May 2010 where the registrar had given directions as to the filing of pleadings by parties and then fixed the first mediation session on 30 July 2010, where the applicant did not attend the session but had instructed their solicitors to attend to inform that the applicant would not be making any offer of settlement. Another mediation session was fixed on 16 August 2010 but this was adjourned at the behest of the applicant to 30 August 2010 which again the applicant did not attend and through their solicitors that they informed that they would not be making any offer as it is of the strong opinion that the termination is a valid termination simpliciter pursuant to a one month notice under the employment agreement. At the hearing proper of the dispute, the applicant again applied for an adjournment on the ground that they have fresh evidence and needed to amend their reply. The chairman did not accept the excuse by the applicant and having examined his reasons and the circumstances before me, I agree with him and my reasons are these. The applicant had been given some five months to prepare their case and to say they now have new evidence is not reasonable by any means. The applicant had terminated the employment of the first respondent and in doing so they must have strong reasons to do so and can be assumed that they had thoroughly and properly investigated those reasons before they made the decision of termination. This is common sense as terminating an employee's service is a serious matter as it relates to one's livelihood. In short they would have all the relevant documents and evidence to support their reasons for termination. My contention is corroborated by the applicant's conduct at the two mediation sessions where they emphatically state that there is nothing to mediate. Furthermore in this day and age the applicant must be ready for trial once the trial dates are fixed by the courts. It is no excuse to inform the court that they have business meetings and are not free to attend the mediation sessions and trial. The business community must accept the fact that attending courts is part of their 'business' when a suit is filed by or against them and they have a duty, like the courts, to ensure that the disposal of the cases is done in an expeditious manner. As for the applicant's counsel's contention that the applicant never got a first chance, let me just say this. What Raus J (as he then was and now a Federal Court judge) said in *Smart Glove Corp* is a statement made back in 2006, which in my view, has no relevance in today's climate in case management in the courts, be it in the Industrial courts or the Civil courts. In any event, the applicant has been given adequate time to prepare their case and the question of getting a 'first chance' does not arise.

[14] Accordingly, the applicant's application for judicial review is dismissed with costs of RM5000 to the first respondent.

Application for judicial review dismissed with costs.

Reported by Kohila Nesan